



VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Arlington County Water Pollution Control Bureau
FOR
Arlington County WPCP
VPDES Permit No. VA0025143**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Arlington County Water Pollution Control Bureau, regarding the Arlington County WPCP facility, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Arlington County WPCB" means Arlington County Water Pollution Control Bureau, an authority created pursuant to the Virginia Water and Waste Authorities Act, Va. Code § 15.2-5100 *et seq.* Arlington County WPCB is a "person" within the meaning of Va. Code § 62.1-44.3.

3. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
4. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. “Discharge” means discharge of a pollutant. 9 VAC 25-31-10
7. “Discharge of a pollutant” when used with reference to the requirements of the VPDES permit program means:
 - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
8. “DMR” means Discharge Monitoring Report.
9. “Effluent” means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
10. “Facility” or “Plant” means the Arlington County WPCP (Water Pollution Control Plant, a wastewater treatment facility) located at 3402 Glebe Road, Arlington, Virginia, 22201, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of Arlington County WPCB.
11. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. “NRO” means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
13. “O&M” means operations and maintenance.
14. “Order” means this document, also known as a “Consent Order” or “Order by Consent,” a type of Special Order under the State Water Control Law.
15. “Permit” means VPDES Permit No. VA0025143, which was issued under the State Water Control Law and the Regulation to Arlington County WPCB on December 1, 2019, and which expires on November 30, 2024.

16. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
17. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
18. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
19. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
20. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
21. "Va. Code" means the Code of Virginia (1950), as amended.
22. "VAC" means the Virginia Administrative Code.
23. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. Arlington County WPCB owns and operates the Plant. The Permit allows Arlington County WPCB to discharge treated sewage and other municipal wastes from the Plant, to Four Mile Run, in strict compliance with the terms and conditions of the Permit.
2. Arlington County WPCB is an Environmental Enterprise (E2) member of the Virginia Environmental Excellence Program (VEEP).

3. Four Mile Run is located in the Potomac River Basin. Four Mile Run is listed in DEQ's 305(b) report as impaired for: aquatic life use, due to dissolved oxygen; fish consumption use, due to PCB, mercury, heptachlor epoxide, and chlordane in fish tissues; and recreational use, due to *E. coli*.
4. On November 11, 2020, DEQ received an initial notification from Arlington County WPCB regarding a November 10, 2020, discharge of 100 gallons of odor control scrubber water (reuse water, sodium hypochlorite, sodium hydroxide) at the Plant into Four Mile Run. This incident was recorded under pollution response IR # 297326.
5. The five-day report from Arlington County WPCB on the November 11, 2020, discharge described that the discharge was due to the failure of a sump pump and alarm system. Corrective actions, including repairs to the pump failure SCADA alarm, were documented in this letter.
6. Part II.F of the Permit states, "Except in compliance with this permit, or another permit issued by the Board, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or 2. Otherwise alter the physical, chemical, or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses."
7. On February 25, 2021, DEQ received notice from Arlington regarding a same-day discharge of 4.6 million gallons of untreated wastewater from the Plant's collection system, due to a sewage backup and overflow at a sanitary manhole, which discharged into the storm drain system and into Four Mile Run. This incident was recorded under IR # 298531. The unauthorized discharge was described as lasting approximately eight hours.
8. Arlington County WPCB detailed in their five-day report that the February 25, 2021, discharge was the result of a loss of power distribution to the Plant's Four Mile Run sewage lift station, which caused a backup of the 54" diameter sewer pipe and subsequent discharge on South Glebe Road. The loss of power was attributed to the unforeseen failure of a high voltage cable termination in the circuit breaker which distributed power to the north side of the plant from the "B" side switchgear, while the "A" side switchgear was nonfunctional due to ongoing maintenance. During this period, the plant did not meet Reliability Class I requirements for infrastructure. The five-day report indicated that the necessary repairs for the "B" side switchgear had been made, and that the repairs to the "A" side switchgear at the plant would be completed as soon as possible (which was completed on May 6, 2021).
9. Part II.F of the Permit states, "Except in compliance with this permit, or another permit issued by the Board, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or 2. Otherwise alter the physical, chemical, or biological properties of such state waters and

make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.”

10. Part I.E.6. of the Permit states, “The permitted treatment works shall meet Reliability Class I.” The Sewage Collection and Treatment Regulations at 9VAC25-790 require treatment works to achieve a certain level of reliability in order to protect water quality and public health consequences in the event of a component or system failure. Reliability means a measure of the ability of the treatment works to perform its designated function without failure or interruption of service.
11. An NOV (No. W.2021-04-N-0009) for these incidents was issued on April 30, 2021, to Arlington County WPCB.
12. Arlington County WPCB responded to the NOV on May 26, 2021. A meeting was held on June 2, 2021, between Arlington County WPCB and DEQ staff to discuss the NOV and corrective actions.
13. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.”
14. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
15. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
16. The Department has issued other permits or certificates to Arlington County WPCB other than VPDES Permit # VA0025143, including: Air Registration # 70026; Underground/Above Ground Storage Tank Registration # 3011817; VPDES Nutrient Trading GP # VAN010021; and VPDES Stormwater Industrial GP # VAR051421.
17. Four Mile Run is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
18. Based on the results of documentation submitted on November 11, 2020, and February 25, 2021, the Board concludes that Arlington County WPCB has violated the Permit, Va. Code § 62.1-44.5, and 9 VAC 25-31-50, by discharging untreated sewage and municipal wastes from the Plant while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C(1) through C(16), above.
19. Arlington County WPCB has submitted documentation that verifies that the violations as described in paragraphs C(3) and C(6), above, have been corrected. Additionally, Arlington County WPCB has retained the services of a consulting engineer to recommend ways to improve the resiliency of the Plant beyond the Reliability Class I requirements, targeted to situations similar to that described in paragraph C(8). Arlington

County WPCB's planned improvements include the development of Standard Operating Procedures to address process modifications that will mitigate the potential effects of full power loss, and process modifications for Plant operation under less-than-full power situations. The recommendations also include changes to switchgear configurations to lower the risk of failure, installation of an additional generator feeder breaker at one electrical distribution center/substation (DC), and installation of generator quick-connects at all other DCs with existing feeder breakers to expedite the hook-up of portable generators, if needed.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Arlington County WPCB, and Arlington County WPCB agrees to, pay a civil charge of \$15,288 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Arlington County WPCB shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Arlington County WPCB shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Arlington County WPCB for good cause shown by Arlington County WPCB, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, Arlington County WPCB admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Arlington County WPCB consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Arlington County WPCB declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Arlington County WPCB to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Arlington County WPCB shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Arlington County WPCB shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Arlington County WPCB shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.


9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Arlington County WPCB. Nevertheless, Arlington County WPCB agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Arlington County WPCB has completed all of the requirements of the Order;
 - b. Arlington County WPCB petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Arlington County WPCB.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Arlington County WPCB from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Arlington County WPCB and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Arlington County WPCB certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Arlington County WPCB to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Arlington County WPCB.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, Arlington County WPCB voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 20th day of October, 20 21.



Thomas A. Faha, Regional Director
Department of Environmental Quality

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Arlington County Water Pollution Control Bureau voluntarily agrees to the issuance of this Order.

Date: 08/11/2021 By: Diana A. Heulach, Bureau Chief
(Person) (Title)
Arlington County Water Pollution Control Bureau

Commonwealth of Virginia
City/County of Arlington

The foregoing document was signed and acknowledged before me this 11 day of August, 2021, by Thomas A. Broderick who is Bureau Chief of Arlington County Water Pollution Control Bureau, on behalf of the Authority.

Maribel Contreras
Notary Public

7504148
Registration No.

My commission expires: July 31, 2023

Notary seal:

